

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM
(CORAM: KOROSSO, J.A., RUMANYIKA, J.A. And MGONYA, J.A)

CIVIL APPEAL NO.216 OF 2021

TANZANIA PORTLAND CEMENT CO. LIMITED.....APPELLANT

VERSUS

NATHAN KITHANIEL KAFANABO.....1ST RESPONDENT

JOSEPH MICHAEL HAULE.....2ND RESPONDENT

ZEPHANIA MLELWA MALEMA.....3RD RESPONDENT

THOMAS AMINIEL USSIRI ON BEHALF

OF 102 OTHERS4TH RESPONDENT

**(Appeal from the Judgment and Decree of the High Court
of Tanzania, District Registry at Dar es Salaam)
(Shangwa, J.)**

dated 28th day of May, 2015

in

Civil Case No. 116 of 2001

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JUDGMENT OF THE COURT

29th September & 16th October, 2023

MGONYA, J.A.:

This appeal arises from the judgment of the High Court of Tanzania, Dar es Salaam District Registry where the respondents successfully sued the appellant and the National Insurance Cooperation (NIC) for payment of unspecified amount of money being their retirement benefits arising out of

the Trust Deed made on 31st May, 1989 between the appellant and Trustees namely Dr. Harmal Kiwia, Abubakar Shebuge, Juma Mshihiri, Gideon Nasari and Mathew Kisinda. However, in this appeal, the 2nd defendant at the trial court was not a party to the appeal since the claims against him were dismissed at the trial court.

The facts giving rise to the suit albeit in brief goes as follows: At different periods of time between 1987 and 2001, the respondents herein who were 106 in total, were employed by Tanzania Portland Cement Co. Limited, the appellant herein, to serve in different positions in her departments. In her plan to assist the workers whose salaries were nominal, the appellant formed a group endowment scheme in which she had to contribute to the insurer for the benefit of her employees upon retirement or in the event of death while at work. It was testified before the trial court by Zephania Marema (PW1) one of the claimants that, the formula of the scheme benefits was payment was 40% of each employee's annual salary. It was the respondents' claims that, after retirement each was paid only the terminal benefits except for the benefit arising from the staff pension group endowment scheme. That their follow ups to the appellant ended in vain, hence institution of the civil suit which is subject to this appeal.

On the other side, the appellant who was the defendant vehemently disputed the claims. Gideon Nassari who testified as DW1 testified that, their efforts to register the scheme were fruitless as a Deed of Trust was wrongly registered in the Ministry of Lands instead of being registered by the Administrator General rendering it impossible to honour the scheme. Hence, their intention to assist the workers was stalled.

Having heard the parties, the High Court decided in favor of the respondents. It was the trial judge's findings that, failure to register the scheme cannot make the plaintiffs lose their rights as it was none of their business or duty to register it. Further, the trial judge held that, the Trust Deed can be enforced against the appellant who prepared it on its own will. Finally, it was ordered that, the employees of top ranking posts were entitled to 40% of their salary per annum with effect from July, 1987 to the date of retirement while those with low ranking posts were entitled to 30% of their salary per annum.

Aggrieved with the High Court decision, the appellant lodged an appeal to this Court. The memorandum of appeal comprises of six grounds of appeal namely:

- i) That the trial court erred at law for entertaining a labor case while it has no jurisdiction to entertain a labor matter;
- ii) The Judgment is bad for vagueness and uncertainty;
- iii) The trial Judge erred at law and facts in holding that the 2nd defendant paid benefits of the Trust Deed to the 1st defendant without proof;
- iv) That the trial court erred at law and facts by awarding all respondents without proof of their claims as only three of them testified;
- v) That the trial court erred in law and facts in granting the respondents' claims while the same were not specifically pleaded and strictly proved as required by law; and
- vi) The trial court erred at law in awarding the respondents' claims under the Trust Deed which was not valid at law.

At the hearing of the appeal, Mr. Emmanuel Ndanu learned advocate appeared for the appellant, whereas the respondents were represented by Mr. Barnaba Luguwa learned advocate. Apart from appearance, Mr. Ndanu filed a written submission in terms of rule 106(1) and (7) of the Tanzania Court of Appeal Rules, 2009 (the Rules) in support of his respective position.

When invited by the Court to submit with regard to the appeal, Mr. Ndanu prayed the Court to adopt his written submission and had nothing to add. On

the respondents' side, Mr. Luguwa when invited, readily conceded to the first and second grounds of appeal with regard to the jurisdiction of the trial court. He contended that, the proper court at a time was the Industrial Court since the matter was founded on a labor dispute and with original jurisdiction to handle labor disputes as it was stipulated under the Industrial Court of Tanzania Act, Cap. 60 [R. E. 2002].

On the second ground of appeal where the appellant complained on the vagueness of the judgment, Mr. Luguwa stated that, from the trial court's judgment, the decree is not executable. Finally, he prayed this Court to remit the matter to the proper court which is the Commission for Mediation and Arbitration (CMA).

Having considered the uncontested grounds of appeal as indicated above, the issue is whether the suit was founded on the labor dispute and whether the High Court lacked jurisdiction to entertain it.

It is undisputed that, in this appeal the learned counsel for the parties are in agreement that, a relationship of employer and employee existed between the respondents and the appellant herein. It is also undisputed that, the endowment scheme and the Deed of Trust was established in the course

of the parties' relationship of employer and employees. It is well evidenced from the records that; the appellant had a plan to improve the lives of its employees by facilitating its establishment and contributing funds in a scheme identified as "TANZANIA PORTLAND CEMENT COMPANY LIMITED GROUP ENDOWMENT ASSURANCE SCHEME" for the benefit of her employees which was to operate under the Trust Deed. Going through the Trust Deed (Exhibit P1), the same was construed in a very clear words that, the employer was desirous to establish an employee retirement benefit scheme. We have also gathered from the rules attached to the Trust Deed that, the purpose of the scheme was for the provision of pensions for members on retirement or relief for dependents in the event of earlier death in course of employment. Reference is made to clause A of the Trust Deed which provides:

"The employer is desirous of constituting and establishing an Employee Retirement Benefit Scheme to be called the TANZANIA PORTLAND CEMENT COMPANY LIMITED GROUP ENDOWMENT ASSURANCE SCHEME for the benefit of its employees."

On that premise therefore, the intended endowment scheme was within the employment relationship between the parties to the suit and not otherwise. As a result, it is our considered view that, any omission to honor

the terms of the scheme automatically falls within what at the time was referred to as a labor trade dispute. Section 3 of the Industrial Court Act, Cap. 60 [R. E. 2002] defines a trade dispute as:

"...any dispute between an employer and employees or an employee in the employment of that employer connected with the employment or non-employment or the terms of employment, or with the condition of any of those employees or such employee."

Having been satisfied that the parties' dispute falls within the trade disputes, then the nagging question is to which forum the Plaintiffs' case was to be referred? This Court in the case of **Tambueni Abdallah & 89 Others v. National Social Security Fund**, Civil Appeal No. 33 of 2020 (unreported) stated that;

"It is clear to us that trade disputes have to follow that prescribed procedure and there is no room for going to the High Court straight. The High Court has no original jurisdiction to entertain trade disputes. Such matters are dealt with in accordance with the Act."

Flowing from the above position of the law, we join our hands with the appellant's counsel that the High Court had no jurisdiction to entertain the

plaintiffs' suit as the matter should have been handled by a court with jurisdiction to try labor disputes.

In several times without number this Court has re-emphasized that, the question of jurisdiction for any court is basic, it goes to the very root of the authority of the court to adjudicate upon cases of different nature. The Court also has insisted that, the issue of jurisdiction in the administration of justice is a creature of statute. See; **Tanzania Revenue Authority v. Tango Transport Company Ltd**, Civil Appeal No. 84 of 2009, **Tanzania Revenue Authority v. New Musoma Textiles Ltd**, Civil Appeal No. 93 of 2009, **Aloyce Hamsini Mchuwau v. Ahamadi Hassan Liyamata**, Criminal Appeal No. 583 of 2018 and **Aloyce James Kasawa v. William Mufungo Mwangwa & Another**, Civil Reference 5 of 2018 (all unreported). In the case of **Michael Mwinuka and 428 Others v. Tanzania Zambia Railway Authority & 2 Others**, Civil Appeal No. 84 of 2018 (unreported) this Court stated that:

"It should be common and indeed very elementary to the legal fraternity that, unless otherwise provided by the law, a court of law should adjudicate only upon a matter over which it has not only jurisdiction but also

the mandate to make and enforce the necessary accompanying orders.”

All said and done, we find the first ground of appeal to be meritorious and the same suffices to dispose of this appeal. In the event therefore, we allow the appeal to the extent above stated.

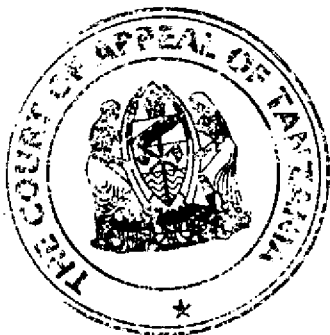
DATED at **DAR ES SALAAM** this 11th day of October, 2023.

W. B. KOROSSO
JUSTICE OF APPEAL

S. M. RUMANYIKA
JUSTICE OF APPEAL

L. E. MGONYA
JUSTICE OF APPEAL

The Judgment delivered this 16th day of October, 2023 in the presence of Mr. Stephan Fusi, learned counsel for the respondent, also holding brief for Rosan Mbwambo, learned counsel for the appellant, is hereby certified as a true copy of the original.



F. A. Mtaranja
F. A. MTARANIA
DEPUTY REGISTRAR
COURT OF APPEAL